IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1645 OF 2007

1. Atharva Institute of Management
   Studies, S. No.P-263, Plot No.8-12,
   Malad Marve Road, Charkop Naka,
   Malad (W), Mumbai-400 095.
2. Atharva Educational Trust,
   through its Trustee:
   S. No.P-263, Plot No.8-12,
   Malad Marve Road, Charkop Naka,
   Malad (W), Mumbai-400 095. ...Petitioners.

Vs.

1. Directorate of Technical Education,
   Maharashtra State, 3,
   Mahapalika Marg,
   Dhobi Talao, Mumbai-400 001.

2. State of Maharashtra,
   Department of Higher Technical
   Education, through the Government
   Pleader, PWD Building, Fort,
   Mumbai-400 023.
3. All India Council for Technical
   Education, through its Western
   Regional Office and having its
   address at 2nd Floor,
   Industrial Assurance Building,
   Veer Nariman Road, Opp.Churchgate
   Rly. Station, Mumbai-400 020.
4. The University of Mumbai,
   Fort Campus, Mumbai-400 023. ...Respondents.

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Mr. S.C. Naidu i/b. M/s. C.R. Naidu & Co. for the Petitioner.
Mr. A.A. Kumbhakoni, Asso. Advocate General for Respondent Nos.1 and 2.
Ms. Beena Menon for Respondent No.3.
Mr.Rui A. Rodrigues for Respondent No.4.

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CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 20, 2007.

JUDGMENT (Per Dr. D.Y. Chandrachud, J. :

Rule, made returnable forthwith. The learned counsel appearing for the Respondents waive service. By consent taken up for hearing and final disposal.

2. The Second Petitioner which is a Public Trust, registered under the Bombay Public Trusts Act, 1950, conducts and manages educational institutions including the First Petitioner. The Second Petitioner applied to the State Government for permission to establish a college for imparting a course of instruction leading up to the conferment of a post-graduate Degree in Management Studies. The State Government granted its permission on 31st October 2002 for the establishment of a College with a capacity of sixty students for imparting instruction towards the post graduate degree in

management studies. The Director of Technical Education accordingly permitted the First Petitioner to start a college from 7th March 2003. The College was granted affiliation by the University of Mumbai on 11th April 2003 to commence a full time MMS Degree Course with an intake capacity of 60 students commencing from the Academic Year 2003-04. The affiliation was extended by the University for the academic years 2004-05 and 2005-06. Upon an application submitted by the Petitioners on 28th July 2006, the University by a communication dated 28th December 2006 recommended an increase in the intake capacity from 60 to 120 students for the MMS Course commencing from 2007-08, to the Government of Maharashtra. The University communicated this recommendation to the Petitioner on 9th January 2007. The College applied to the All India Council for Technical Education (AICTE), the Third Respondent, for sanctioning an enhancement in its intake capacity to 120 students for the MMS Degree Course from the Academic Year 2007-08. The Petitioners have stated that the deficiencies which were noted by an Expert Committee constituted by AICTE were rectified by the College and compliance was verified by

the Regional Committee. However, on 10th May 2007, AICTE extended its approval for the original intake capacity of 60 students for the Academic Year 2007-08. In para 11 of the Petition, the case of the Petitioners is that they pointed out to AICTE that the application that had been submitted by them was, in fact, for an enhancement of the student strength to 120 for which requisite infrastructure had been made available. On 25th July 2007, AICTE revised its earlier order of 10th May 2007 and allowed an enhancement in the student strength from 60 to 120 students with effect from Academic Year 2007-08. The approval granted by AICTE was subject to the following conditions :

> "The additional intake is being granted based on the projection shown in the Detailed Project Report regarding additional built up space, faculty and other facilities for the proposed intake. It may be noted that all facilities including additional built up area should be made available before the commencement of the next academic session. Random surprise inspection would be carried out to verify facilities and if the institute is found deficient in fulfillment of norms

and standards of AICTE, appropriate action would be initiated by the Council.

All other terms and conditions of the approval letter under reference will remain unchanged.

This approval is granted based on the Appraisal of the information submitted by the institution on infrastructural, faculty and academic facilities created for the proposed course(s). Therefore the approval is subject to the verification of the claims made by the institution through an Expert Committee Visit. In case the claims made by the institution are found to be false, the approval granted shall be liable to be withdrawn."

3. For the year 2007-08, the Petitioners had agreed to participate in the Common Entrance Test and in the Centralised Admission Process (CAP) conducted by the State Government through the Directorate of Technical Education. Admissions for the MMS Course for the previous academic year were made by the First Respondent through the centralised admissions procedure. On 17th

July 2007, the Second Respondent published Rules for Admission governing the two year full time Post Graduate Degree course in Management Studies for the Academic Year 2007-08. Annexure 5 thereto contained, inter alia, detailed information of the institutions which were duly approved by AICTE for the Post Graduate Degree Course in Management Studies. There is a reference to the First Petitioner in the brochure. On 6th August 2007, the Petitioners informed the First Respondent of the approval granted by AICTE for an enhancement of the intake capacity for the Academic Year 2007-08. According to the Petitioners, the First Respondent expressed its inability to do anything in the matter. In the meantime, an admission notification was issued on 21st July 2007 and it has been stated that four rounds were contemplated in the admission procedure through the centralized admissions process. The grievance of the Petitioners is that the additional 60 seats approved by AICTE have not been included by the First Respondent as part of the admission process. The petition before this Court was instituted on 8th August 2007.

4. The basis of the petition is that AICTE is constituted under

an Act of Parliament referable to Entry 66 of the Union List to the Seventh Schedule to the Constitution. It is urged that once AICTE varied the intake capacity, the enhanced seats would have to be automatically included in subsequent rounds of the centralized admission process. The relief that has been sought is a writ of mandamus to the First and Second Respondents – the Directorate of Technical Education and the State Government – to forthwith include the additional 60 seats for the MMS Course offered by the First Petitioner in the centralized admission procedure for the Academic Year 2007-08 and to admit students in the fourth round.

5. AICTE initially filed an affidavit in reply of its Regional Officer for the Western Region on 13th August 2007. The affidavit in reply sets out that AICTE has notified a document called the Approval Process Handbook which deals with extension of approval to existing institutions as well as a variation or increase in intake capacity of existing courses, amongst other things. Initially AICTE has issued a national calendar for the grant of approval but it has been stated that by a notification of 28th November 2005, the earlier

approach was given up and since then applications are permitted to be submitted by institutions at any time, all through the year, with a defined schedule and procedure for processing applications. AICTE stated that this was applied uniformally to all States in the country and the action was referable to the power conferred by Section 23(1) read with clauses (b), (g), (k), (p) and (v) of Section 10 and Section 11 of the AICTE Act, 1987. In so far as the State of Maharashtra is concerned, it has been stated that as a result of certain orders passed by this Court, the cut off date that has been adopted is 30th June of the concerned Academic Year. The aforesaid orders were passed by Division Benches of this Court in Writ Petition 3916 of 2001 and subsequently in Writ Petition 5986 of 2005, to which a reference would be made shortly hereafter. AICTE has, however, clarified in its affidavit that approval by the Council is not a mandate to the authorities conducting admissions in the States to necessarily allow an enhancement in the strength of students if the admission process is complete. AICTE has, therefore, clarified that it would not be possible to admit students midstream after the admissions process is complete since that is against the very spirit of the statute governing

technical education. An extract from the affidavit of AICTE is as follows :

> “It is to be noted here however, that, grant of approval by the Council does not make it mandatory upon the admission conducting authority to include the institution in the upgraded category if its admission process is over. Such approvals granted after the cut off date in the State of Maharashtra is merely to facilitate admissions if it is possible to accommodate them under and considering the order of W.P. 5986/05 which provided for such contingencies, and which accommodation will not be possible at all without an approval letter from the Council and the loss will be that of the students of the State of Maharashtra. It is an admitted fact that there is no scope for admitting students mid-stream after admissions are over and course has commenced as that would be against the very spirit of the statute governing the technical education. The Council however has no role to play in the admission process and or the affiliation which are the sole discretion

and prerogative of the State Government and the concerned University respectively in accordance with law."

In the present case, it has been submitted that the institution had preferred an appeal to the Council on 18th June 2007 in pursuance whereof the enhancement of intake capacity came to be granted.

6. A subsequent affidavit was filed by AICTE in these proceedings on 21st August 2007, since during the course of the hearing of the Writ Petition, it emerged before the Court that as many as 37 institutions had been granted approval by AICTE between 16th July 2007 and 9th August 2007 in the State of Maharashtra. The grant of approvals at such a belated stage had given rise to a situation where this Court was being moved in a large number of petitions filed by educational institutions claiming that the State Government should allow an enhancement of their admission capacity based on the sanction granted by AICTE. AICTE informed the Court in its affidavit dated 21st August 2007 that at a meeting of its Executive Committee held on 16th August 2007, the Council had prescribed 31st December

each year as a cut off date for submission of applications for establishing new institutions, introducing new course and for increasing intake of all existing courses. The Council stated thus:

> "The Council has determined through its 56th Executive Committee meeting held on 16th August 2007, a general cut-off date of 31st December of every year as submission of applications for establishment of new technical institutions/ introduction of new courses/variation in take/ increase in intake by the Institutions for consideration for the following academic year. All applications received by the Council after 31st December will be processed and considered for approval only for the academic year following the next year. This will ensure that Institutions interested in conducting new courses, seeking additional intake in existing courses, or establishing new institutions for an academic year will have to submit their applications to the Council on or before 31st December of the previous academic year."

7. AICTE filed a further affidavit in these proceedings on 21st August 2007 noting that it was informed by the Directorate of Technical Education that the last date of admissions was 10th August 2007. In the background of this position, AICTE categorically affirmed before the Court that an enhancement of the admission capacity cannot be allowed to the Petitioners for admission for the Academic Year 2007-08 :

> "...at this material point of time the petition cannot be allowed for admissions for the academic year 2007-2008 for 60 seats in MMS granted by the Respondent Council."

8. At this stage, it would be necessary for the Court to take note of certain orders passed by Division Benches of this Court. The first order was passed by a Division Bench to which one of us (Dr. D.Y. Chandrachud) was a member, on 17th September 2001 in **All India Council for Technical Education vs. State of Maharashtra** (Writ Petition 3916 of 2001). AICTE had moved this Court, aggrieved by the action of the State Government and the Directorate of Technical Education in publishing an information brochure indicating

Collegewise intake capacity which was at a variance with what was prescribed by AICTE. AICTE submitted before the Court that the statutory power to grant approval to the number of seats available for admissions in professional colleges fell within the authority of the Council and no college is empowered to change the intake capacity so sanctioned. The authority of AICTE was not challenged by the Advocate General appearing on behalf of the State Government, but it was urged that there were conflicting orders of AICTE whereby in the first instance, the intake capacity was decided which was subsequently reduced or increased and again reduced or increased, resulting in uncertainty in the admission process. The contention of the State Government was that AICTE should inform the Government of the intake capacity well in advance so as to furnish adequate intimation to prospective candidates. This Court noted that AICTE "welcomed this suggestion made by the Advocate General". Accordingly, the following statement was made on behalf of AICTE in the writ proceedings:

> "...with effect from the Academic Year 2002-2003, the AICTE shall communicate to the State Government before

> 30th June each year the intake capacity of different colleges concerned in the State of Maharashtra, and the intake capacity so determined shall not be changed thereafter. The State of Maharashtra will inform the prospective candidates accordingly and no change after 30th June of that year shall be made."

Subsequently, the issue was again revisited by a Division Bench of this Court in **Yerala Medical Trust Research Centre vs. State of Maharashtra.**[1] The Division Bench noted that the earlier judgment of this Court in Writ Petition 3916 of 2001 was rendered in order to facilitate certainty in the admissions process and it was in order to ensure that this aspect of certainty was not disturbed, that 30th June was prescribed as a cut off date. In the case before the Division Bench, it was, however, noted that AICTE had issued a notice in July, inviting applications upto August 16 and the effect thereof was that AICTE had given up its national calendar. The Division Bench, therefore, clarified that it was inclined to provide for certain contingencies as had occurred in that case without departing from the

1 2006(1) Bom. C.R. 701

cut off date of 30th June in the judgment of this Court dated 17th September 2001. The directions issued by the Division Bench were to the following effect :

> "i) The State Government will consider the intake capacity as on 30th June 2005 to commence the process for filling in seats subject to what is set out hereunder;
>
> ii) If before the last date of the admission/counselling process, AICTE increases the intake of existing institutions or grants permission for new colleges, the State Government will take into consideration such additional seats and take steps to fill in these seats from amongst students already on their list and without interfering with the admission process already completed;
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> (iii) This would, however, be subject to the condition that such institutions must have affiliation in terms directed by Respondent No.3 and the institutional students are in a position to complete the necessary number of days for appearing for the examination in terms fixed by Respondent No.3 as followed by Respondent No.6.

(iv) It is made clear that those who have already been admitted before the increased intake or approval by Respondent No.3 by granting aapproval of new institutions or additional intake will not be entitled to apply nor will the State consider their applications for admission in the new college where approval has been granted or intake increased."

Subsequently, orders were passed by the Division Benches of this Court on 18th August 2006 (Writ Petition 5538 of 2006 and Writ Petition 5532 of 2006) and on 12th September 2006 (Writ Petition 2215 of 2006).

9. The State Government has, in the course of these proceedings, set out the serious difficulties that arise in implementing the admissions process if AICTE grants approval throughout the year in an unregulated manner. This, it has been stated, would cause irreparable loss, hardship and immense inconvenience to students. An increase in the number of seats for a particular academic year can

occur for one of the following reasons viz., : (i) An approval granted for opening of a new College; (ii) An approval granted for opening of a new course in an existing affiliated College; and (iii) An approval granted for an increase in the intake capacity of an approved affiliated old course conducted by an existing approved and affiliated College. The State Government has stated that if approval is granted on the eve of the commencement of admissions, such additional seats should not be made available for the grant of admissions in the particular Academic Year for several reasons :

(i) The educational institution is not immediately entitled to admit students merely on the ground of approval by AICTE, because AICTE grants approval subject to the fulfillment of various conditions. Hence, unless an exercise is conducted by the statutory authority to record a finding that such conditions subject to the fulfillment of which approval has been granted by AICTE are, in fact, fulfilled, admissions cannot be granted in furtherance of the approval. This process of recording the satisfactory fulfillment of the conditions prescribed by AICTE takes time and cannot be completed before the commencement of the admissions process if the approval received from AICTE is on the eve of the commencement of admissions;

(ii) Upon the approval by AICTE, institutions are required to obtain affiliation from the concerned University. The process of affiliation takes a few months since it involves inspection by a local Inspection Committee and the consideration of the report of the Academic Council of the University. The process of affiliation, therefore, cannot be conducted and completed if the initial approval of AICTE is received just before admissions are to commence;

(iii) In view of the judgments of the Supreme Court, it is impermissible in such a case to grant provisional admissions, thereby putting the career of a large body of innocent students in danger. Several institutions admit students armed with the approval of AICTE and in such cases if affiliation is refused by the University, that would seriously affect the careers of the students;

(iv) If additional seats are made available during the admissions process, the students who are already admitted prior to making such additional seats available, do not get an opportunity to claim those seats. As a result of this, the golden rule for the allotment of seats on the basis of merit-cum-choice gets breached;

(v) In the event that the seats which additionally become available during the continuation of the admissions process are made available to students who have already been admitted by the time that such seats are made available, the entire process would be thrown out of gear and would get severely disturbed. If students who have already been admitted are allowed to change their admissions,

this would set in motion a change which would have a cascading effect destroying the entire admissions process that has already become settled;

(vi) The Competent Authority which is incharge of conducting admissions would also be faced with innumerable administrative difficulties when additional seats become available during the admissions process. The distribution of the allotment of seats to various categories including reserved seats is a complex process which has to be conducted not only on the basis of seats available at the College, but also seats available overall in the State. As against the Health Science Courses where admissions are granted to a limited and restricted number of courses, in the case of Technical Courses, there are numerous choices available to students, namely, (i) coursewise choices, there being more than 60 courses; (ii) collegewise choices, there being about 163 colleges; (iii) quotawise choices; (iv) categorywise choices – reserved, open, reserved for women etc.; and (v) institutionwise choices - involving a differential fee structure and affordability of the payment of fees. The State

Government has, therefore, submitted that approval should not be granted by AICTE on the eve of the commencement of the admissions process so that no complications would arise. Institutions which get approval either for the first time or for additional courses or, for that matter for additional intake capacity, can wait for the next Academic Year for commencement of that course within which period, requisite statutory approvals and permissions can be obtained. A large number of students seeking admissions to technical courses come from rural areas and the students, their parents and teachers go strictly by what is stated in the admissions brochure. Such students have no access to know, inter alia, about the availability of additional seats.

10. We have set out in detail, the submissions urged on behalf of the State Government in regard to the serious consequences which are likely to ensue in terms of the disruption of the admissions process if the approvals granted by AICTE on the eve of the commencement of the admissions process are to be implemented forthwith for the immediately commencing Academic Year. AICTE on

its part, has clarified before the Court that it adopted what is called a National Calendar for the grant of approval. However, this was given up after the notification dated 28th November 2005 as a result of which institutions were permitted to submit applications all through the year. The judgment of the Division Bench in **Yerala Medical Trust and Research Centre** (supra) was rendered in the context of an exceptional fact situation where AICTE had issued a notice in July inviting applications upto the middle of August. This Court, therefore, issued directions already noted earlier, in order to ensure that while on the one hand, the cut off date for ascertaining the intake capacity as 30th June was not disturbed, the State Government would take into consideration additional seats sanctioned by AICTE. If such seats were sanctioned before the last date of admission, this was to be subject to the institution having affiliation in terms directed by AICTE and subject to the condition that the students would be in a position to complete the requisite terms, but the admissions which were already completed would not be disturbed. AICTE has now stated before the Court in these proceedings that the grant of approval by the Council for an increase in the intake capacity does not make it mandatory for

the State Government to include the institution for the enhanced number of seats if the admissions process is over, since there is absolutely no warrant for admitting students midstream. The Council has in fact, clarified that it has no role to play in the actual admissions process or with affiliation which lie within the sole prerogative of the State Governments and the concerned Universities respectively. AICTE has now taken cognizance of the serious potential for the disruption of the admissions process if approvals are granted on the eve of the admissions process. The Executive Committee of AICTE has prescribed in its meeting held on 16th August 2007, a general cut off date of 31st December every year for the submission of applications for establishing new technical institutions, introducing new courses and for a variation of intake capacity. Applications received after 31st December will be processed and considered for approval only for the Academic Year following the next year. We record the assurance of AICTE that it will abide by the statement made on affidavit before this Court. The affidavit filed by the Regional Officer of the Western Region is in turn based on instructions furnished on 20th August 2007 by the Competent Authority at New

Delhi.

11. The submissions which have been placed on the record of the Court by the State Government deserve to be accepted. There is a need to ensure certainty in the admissions process from the point of view of the students, institutions themselves as well as the authority regulating admissions. The admissions process is liable to be seriously jeopardised if the Court were to pass orders directing the State Government to forthwith implement an increase in the intake capacity in the midst of an on-going admissions process. A sense of judicial restraint must prevail. Universities cannot be commanded by Courts to shorten the time schedule prescribed by experts for completing the affiliation process. Judicial intervention is unfortunately liable to result in a situation where corners are cut and deficiencies ignored. Courts must have due deference to the views of the experts in academic matters. Above all, it needs emphasis that the cause of education is drawn on a canvas which is far broader than the interests of the institutions. This Court will not interfere mid stream in the admissions process or set down unrealistic time

schedule for regulating authorities. For, that would only be at the cost of quality in education. Orders cannot be passed by the Court, the effect whereof would be to cause a serious disruption of the entire process of admission. This, in fact, as AICTE has placed before the Court, would be contrary to the intent and spirit of AICTE Act.

12. Finally in so far as the Petitioners are concerned, both, the State Government and AICTE have informed the Court that the last date for admission is over and the Petitioners cannot be included in the centralized admission process for this year. The Petitioners had applied to the University of Mumbai on 28th July 2006 seeking extension of affiliation for an increase in intake capacity from 60 students to 120 students for the Academic Year 2007-08. The University on its part had forwarded a recommendation to the State Government on 9th January 2007. The management of the College thereupon preferred an application to the Regional Office of AICTE seeking enhancement in the intake capacity to 120 students. The Expert Committee visited the institution. After the visit of the Expert Committee, it was on 10th May 2007 that AICTE reiterated an intake

capacity of 60 students to the Petitioners. The Petitioners moved an appeal to the Appellate Authority of AICTE upon which a revised order was issued on 25th July 2007. The Petitioners submitted before the Court that arrangements were made by them for the requisite infrastructure. We are of the view that having regard to the fact that the admissions process for the Academic Year 2007-08 stands concluded, it is neither appropriate nor proper for the Court to exercise its writ jurisdiction under Article 226 of the Constitution of India to direct the State Government to grant permission for the enhancement in the intake capacity. Such directions by the Court, once the admission process is mid stream, or as in this case stands concluded, must be eschewed. We do not, therefore, find that any relief can be granted to the Petitioners. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE

Dr.D.Y. CHANDRACHUD, J.